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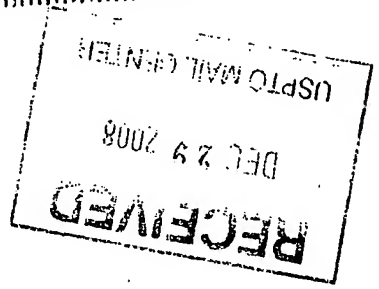

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,049	04/08/2004	Dustin Kirkland	AUS920031008US1	9648

7590 12/10/2008

Darcell Walker
Suite 250
9301 Southwest Freeway
Houston, TX 77074

EXAMINER	
ZUBAJLO, JENNIFER L	
ART UNIT	**PAPER NUMBER**
2629	

MAIL DATE	DELIVERY MODE
12/10/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/821,049	Applicant(s) KIRKLAND ET AL.	
	Examiner JENNIFER ZUBAJLO	Art Unit 2629	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11/20/08 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): 35 U.S.C. 101 rejections are overcome by amendment to specification paragraph [0036].
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: *none*.
   Claim(s) objected to: *none*.
   Claim(s) rejected: *1-3,7,9-13,15,17-21,23 and 24*.
   Claim(s) withdrawn from consideration: *n/a*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: same reasons as set forth in previous office action (also see attached response to arguments).
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Amare Mengistu/
Supervisory Patent Examiner, Art Unit 2629

/Jennifer Zubajlo/
12/4/08

ADVISORY ACTION

Response to Arguments

1. Applicant's arguments filed 11/20/08 have been fully considered but they are not persuasive.

Rejections under 35 USC § 101 are withdrawn because of amendment to paragraph [0036] of specification.

Rejections under 35 USC § 103 are maintained as in previous Office Action.

Applicant argues that "in Applicant's invention, the screen sections are not automatically on the screen" and "because the user has this option, it is necessary to determine whether a display has multiple sections". Even though Dunn has predefined display sections, it still reads on claimed "determining whether display has multiple sections" because inherently the display would have to determine whether there are multiple sections in order to define the area for these sections and to properly adjust the display portions with movement of the users eye over each different section. Dunn teaches determining whether the display has multiple sections (see Abstract – note that there are multiple sections shown and it is inherent for the processor to determine the number of sections even if it is automatically 2 sections); determining whether a user desires to have section adjustments (see Abstract – note that a user moves his or her

eyes in order to make adjustments to the display sections, therefore, if the user looks at a specific section, the user is making a choice to adjust that section, if the user doesn't look at a section or does not wear the headpiece, then user is choosing to not select a section for adjustment); when the user does desire to have section adjustments, identifying a section selected by user for adjustment and adjusting this section on the display screen (see Abstract – note that the user identifies the section for adjustment by moving his or her eyes over the area he or she wishes to adjust).

Applicant argues that there has to be some teaching suggestion or motivation to modify or combine the cited references. Applicant argues that the Examiner has failed to present a prima facie case of obviousness. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the teaching of valid movement associated with position/motion detection is the teaching taken from Janky and incorporated into the position/motion detection used for adjusting a display taught by Lee (see above rejection). Janky states that position reporting devices are frequently used to locate and report the position of a person or object (see column 1 lines 21-22) which is the motivation/suggestion to combine these references. The multiple display section adjustment taken from Janky

and incorporated into the combination of Lee and Janky is taken only for the teaching of the multiple sections being adjusted separately and the motivation for this combination is because this is a display device with adjusted movement based on user movement and to make a more user friendly device. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the validity of the movements detected by a motion detector taught by Janky and the sectional display with section adjustments taught by Dunn into the method and system for adjusting a screen display based on a user's distance from the display device taught by Lee in order to provide a device which can trigger another electrical device (a display) to perform a particular task (section adjustment) upon entering or leaving a designated location zone (see Janky - column 2 lines 22-24).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNIFER ZUBAJLO whose telephone number is (571)270-1551. The examiner can normally be reached on Monday-Friday, 8 am - 5 pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amare Mengistu can be reached on (571) 272-7674. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jennifer Zubajlo/
12/4/08

/Amare Mengistu/
Supervisory Patent Examiner, Art Unit 2629